

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1791

Introduced by Assembly Member Buchanan
(~~Coauthor:~~ Coauthors: Assembly Member Members Fong, Gatto,
and Hagman)
(Coauthor: Senator Lieu)

February 21, 2012

An act to add Chapter 3.1 (commencing with Section 12114) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1791, as amended, Buchanan. Public contracts: state contracts: computer software.

Existing law requires the Department of General Services to maintain policies and procedures governing the acquisition and disposal of information technology goods and services. Existing law authorizes the Department of General Services to adopt rules and regulations as are necessary to govern the acquisition and disposal of information technology goods and services.

~~This bill would require state agencies executing or amending a contract with any contractor or supplier to require that contractor or supplier to certify, as provided, that it does not use unlawful computer software in its business operations. This bill would require a state agency and any contractor or supplier to resolve disputes regarding failure to certify or false certification, as provided.~~

This bill would require the Department of General Services to add a provision to state contracts that requires a contractor to certify that it has appropriate systems and controls in place to ensure that its use of computer software complies with applicable copyright laws. This bill would require contracts between state agencies and contractors to include a provision that requires the contractor to certify that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of the contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws. This bill would require, if there is a dispute regarding the contractor's certification, the dispute provisions of the contract to apply, and would require the dispute provisions of the contract to be the sole avenue for challenging a certification.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) The State of California recognizes the critical importance*
- 4 *of information technology to the economic growth and*
- 5 *competitiveness of all industry sectors.*
- 6 *(b) The information technology industry is one of the most*
- 7 *vibrant sectors of California's economy, employing 880,000*
- 8 *California workers in 2009 and generating \$76 billion in annual*
- 9 *wages.*
- 10 *(c) The illegal use of unlicensed computer software reduces the*
- 11 *profitability of California's information technology and other*
- 12 *industries and their ability to create jobs and generate tax revenues*
- 13 *for the state.*
- 14 *(d) A 2012 Orange County Business Council study found that*
- 15 *California lost \$1.6 billion in economic activity, nearly 20,000*
- 16 *jobs, and \$700 million in tax revenue in 2011 due to software*
- 17 *piracy.*
- 18 *(e) When government contractors unfairly reduce their costs*
- 19 *by stealing computer software, they harm competition in California*
- 20 *to the detriment of companies that lawfully acquire the software*
- 21 *they use.*

1 (f) *The State of California procures billions of dollars in goods*
2 *and services and awards hundreds of contracts annually and*
3 *should ensure that any tax dollars spent on procurement and*
4 *contracts go to businesses that conduct themselves within the*
5 *parameters of the law.*

6 (g) *It shall be the policy of the State of California that it does*
7 *business with contractors that comply with applicable copyright*
8 *laws in their use of computer software.*

9 SEC. 2. Chapter 3.1 (commencing with Section 12114) is added
10 to Part 2 of Division 2 of the Public Contract Code, to read:

11
12 *CHAPTER 3.1. CERTIFICATION OF LAWFUL COMPUTER*
13 *SOFTWARE USE*
14

15 12114. *For purposes of this chapter:*

16 (a) *“Contractor” shall not include a subcontractor or supplier*
17 *to the contractor.*

18 (b) *“State agency” means each agency, department, board,*
19 *commission, and office of the executive branch.*

20 12115. *The Department of General Services shall add a*
21 *provision to state contracts that requires a contractor to certify*
22 *that it has appropriate systems and controls in place to ensure*
23 *that its use of computer software complies with applicable*
24 *copyright laws. This certification applies only to the contractor’s*
25 *use of computer software and shall not apply to products supplied*
26 *to the state pursuant to the contract.*

27 12116. *Contracts between state agencies and contractors shall*
28 *include a provision that requires the contractor to certify that it*
29 *has appropriate systems and controls in place to ensure that state*
30 *funds will not be used in the performance of the contract for the*
31 *acquisition, operation, or maintenance of computer software in*
32 *violation of copyright laws.*

33 12117. *A certification pursuant to Section 12115 or 12116*
34 *shall not be considered false or fraudulent to the extent software*
35 *use in violation of applicable copyright laws arises from causes*
36 *beyond the control and without the fault or negligence of the*
37 *contractor.*

38 12118. *If there is a dispute regarding the contractor’s*
39 *certification pursuant to Section 12115 or 12116, the dispute*
40 *provisions of the contract shall apply. The dispute provisions set*

1 *forth in the contract shall be the sole avenue for challenging a*
2 *certification made pursuant to Section 12115 or 12116.*

3 *12119. The provisions of this chapter are severable. If any*
4 *provision of this chapter or its application is held invalid, that*
5 *invalidity shall not affect other provisions or applications that can*
6 *be given effect without the invalid provision or application.*

7 ~~SECTION 1. The Legislature finds and declares all of the~~
8 ~~following:~~

9 ~~(a) The State of California recognizes the critical importance~~
10 ~~of information technology to the economic growth and~~
11 ~~competitiveness of all industry sectors.~~

12 ~~(b) The information technology industry is one of the most~~
13 ~~vibrant sectors of California's economy, employing 880,000~~
14 ~~California workers in 2009 and generating \$76 billion in annual~~
15 ~~wages.~~

16 ~~(c) The illegal use of unlicensed computer software reduces the~~
17 ~~profitability of California's information technology and other~~
18 ~~industries and their ability to create jobs and generate tax revenues~~
19 ~~for the state. Studies show that reducing software piracy worldwide~~
20 ~~by 10 percentage points would create \$142 billion in new economic~~
21 ~~activity and 500,000 new high-tech jobs.~~

22 ~~(d) Software theft is particularly pervasive in countries with a~~
23 ~~poor record of enforcing intellectual property rights and other laws~~
24 ~~against unfair and unethical business practices.~~

25 ~~(e) In countries with weak rule of law, companies routinely use~~
26 ~~large quantities of unlicensed computer software, often worth~~
27 ~~millions of dollars, which unfairly reduces their business costs and~~
28 ~~results in an unfair competitive advantage. This unfair advantage~~
29 ~~translates into decreased sales, reduced market share, and fewer~~
30 ~~jobs in California.~~

31 ~~(f) When government contractors or suppliers unfairly reduce~~
32 ~~their costs by stealing computer software, they harm competition~~
33 ~~in California to the detriment of companies that lawfully acquire~~
34 ~~the software they use.~~

35 ~~(g) The State of California procures billions of dollars in goods~~
36 ~~and services and awards hundreds of contracts annually and should~~
37 ~~ensure that any tax dollars spent on procurements and contracts~~
38 ~~go to businesses that conduct themselves within the parameters of~~
39 ~~the law.~~

1 ~~SEC. 2. Chapter 3.1 (commencing with Section 12114) is added~~
2 ~~to Part 2 of Division 2 of the Public Contract Code, to read:~~

3
4 ~~CHAPTER 3.1. CERTIFICATION OF LAWFUL COMPUTER~~
5 ~~SOFTWARE USE~~
6

7 ~~12114. It shall be the policy of the State of California that~~
8 ~~contractors and suppliers shall use only lawful computer software~~
9 ~~in their business operations.~~

10 ~~12115. State agencies, in executing or amending a contract~~
11 ~~with a contractor or supplier, shall require the contractor or supplier~~
12 ~~to certify that it does not use unlawful computer software in its~~
13 ~~business operations.~~

14 ~~12116. If a contractor or supplier fails to make the certification~~
15 ~~described in Section 12115, or if the state agency determines that~~
16 ~~a contractor or supplier has made a false declaration or certification~~
17 ~~pursuant to Section 12115, the parties shall deal in good faith and~~
18 ~~attempt to resolve the dispute informally. If the dispute persists,~~
19 ~~the contractor or supplier may submit to the state agency a new~~
20 ~~certification pursuant to Section 12115 that shall be fully supported~~
21 ~~by factual information and shall include a written statement signed~~
22 ~~by an authorized person indicating that the supporting data is~~
23 ~~accurate and complete.~~

24 ~~12117. The Department of General Services shall add a~~
25 ~~provision setting forth the certification requirement described in~~
26 ~~Section 12115 to the Patent, Copyright, and Trade Secret Indemnity~~
27 ~~provisions of the General Provisions for Non-IT Commodities and~~
28 ~~to the Patent, Copyright, and Trade Secret Indemnity provisions~~
29 ~~of the IT General Provisions.~~

30 ~~12118. For purposes of this chapter, "state agency" means each~~
31 ~~agency, department, board, commission, and office of the executive~~
32 ~~branch.~~

33 ~~12119. The invalidity of any portion of this chapter shall not~~
34 ~~affect the validity of the remainder thereof.~~